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AMENDED IN ASSEMBLY APRIL 3, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1879

Introduced by Assembly Members Feuer and Huffman

(Principal coauthors: Assembly Members Blakeslee, Hernandez, and Solorio)

(Principal coauthor: Senator Simitian)

(Coauthor: Senator Calderon)

February 4, 2008

~~An act to amend Section 25173.6 of, and to add Article 14 (commencing with Section 25251) to Chapter 6.5 of Division 20 of, An act to add Sections 25252, 25252.5, 25253, 25254, 25255, and 25257 to the Health and Safety Code, relating to hazardous materials.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1879, as amended, Feuer. Hazardous materials: toxic substances.

(1) Existing law establishes the Department of Toxic Substances Control, in the California Environmental Protection Agency, with powers and duties regarding, among other things, hazardous waste disposal, underground storage of hazardous substances and waste, and the handling and release of hazardous materials.

~~This bill would authorize the department to regulate the use of a chemical of concern in a consumer product or restrict the sale or use of a consumer product that contains a chemical of concern to prevent the exposure of individuals or the environment to the specified chemicals. The department would be required to prioritize regulatory action based on specified criteria. The department would be authorized to require a manufacturer of a consumer product containing the specified chemicals to label its product indicating the presence of the chemical and health effects associated with the chemical. The department would be required to implement this measure in conformity with applicable federal laws and regulations~~ *require the department by January 1, 2011, to adopt regulations to establish a process by which chemicals or chemical ingredients in products may be identified and prioritized for consideration as being chemicals of concern. The bill would specify a procedure for the adoption of those regulations, including requiring that the department, in adopting those regulations, prepare a multimedia life cycle evaluation, as defined, and submit the regulations and the multimedia life cycle evaluation to the California Environmental Policy Council for review.*

The department would also be required to adopt, by January 1, 2011, regulations to establish a process by which chemicals of concern in products, and their potential alternatives, are evaluated to determine how best to limit exposure or to reduce the level of hazard posed by a chemical of concern. The regulations would be required to specify actions that the department may take following the completion of the analysis, including imposing requirements to provide additional information, requirements for labeling or other type of product information, controlling access to or limiting exposure, managing the product at the end of its useful life, or funding green chemistry challenge grants, restrictions on the use of the chemical of concern in the product, or prohibitions on use.

The bill would require the department to establish a Green Ribbon Science Panel to advise the department and the council.

The bill would establish a procedure for the protection of information submitted to the department that is claimed to be a trade secret. Because a violation of the regulations adopted by the department pursuant to the bill would be a crime, this bill would impose a state-mandated local program.

This bill would become effective only if SB 509 is enacted on or before January 1, 2009.

~~(2) The Environmental Cleanup and Fee Reform Act of 1997, creates the Toxic Substances Control Account in the General Fund. Specified charges imposed on corporations handling hazardous materials are required to be deposited in that account. Under existing law, the funds in the Toxic Substances Control Account may be appropriated to the department for specified purposes.~~

~~This bill would add to the purposes for which the funds in the Toxic Substances Control Account may be appropriated to the department the regulation by the department of the use of a chemical of concern in a consumer product or the restriction by the department of the sale or use of a consumer product containing a chemical of concern to prevent the exposure of individuals or the environment to those chemicals.~~

~~This bill would delete obsolete provisions.~~

~~(3)~~

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 25252 is added to the Health and Safety
- 2 Code, to read:
- 3 25252. (a) On or before January 1, 2011, the department shall
- 4 adopt regulations to establish a process to identify and prioritize
- 5 those chemicals or chemical ingredients in consumer products
- 6 that may be considered as being a chemical of concern, in
- 7 accordance with the review process specified in Section 25252.5.
- 8 The department shall adopt these regulations in consultation with
- 9 the office and all appropriate state agencies and after conducting
- 10 one or more public workshops for which the department provides
- 11 public notice and provides an opportunity for all interested parties
- 12 to comment. The regulations adopted pursuant to this section shall
- 13 establish an identification and prioritization process that includes,
- 14 but is not limited to, all of the following considerations:
- 15 (1) The volume of the chemical in commerce in this state.

1 (2) *The potential for exposure to the chemical in a consumer*
2 *product.*

3 (3) *Potential effects on sensitive subpopulations, including*
4 *infants and children.*

5 (b) (1) *In adopting regulations pursuant to this section, the*
6 *department shall develop criteria by which chemicals and their*
7 *alternatives may be evaluated. These criteria shall include, but*
8 *not be limited to, the traits, characteristics and endpoints that are*
9 *included in the clearinghouse data pursuant to Section 25256.1.*

10 (2) *In adopting regulations pursuant to this section , the*
11 *department shall reference and use, to the maximum extent feasible,*
12 *available information from other nations, governments, and*
13 *authoritative bodies that have undertaken similar chemical*
14 *prioritization processes, so as to leverage the work and costs*
15 *already incurred by those entities and to minimize costs and*
16 *maximize benefits for the state's economy.*

17 (3) *Paragraph (2) does not require the department, when*
18 *adopting regulations pursuant to this section, to reference and use*
19 *only the available information specified in paragraph (2).*

20 SEC. 2. *Section 25252.5 is added to the Health and Safety*
21 *Code, to read:*

22 25252.5. (a) *Except as provided in subdivision (f), the*
23 *department, in adopting the regulations pursuant to Sections 25252*
24 *and 25253, shall prepare a multimedia life cycle evaluation*
25 *conducted by affected agencies and coordinated by the department,*
26 *and shall submit the regulations and the multimedia life cycle*
27 *evaluation to the council for review.*

28 (b) *The multimedia evaluation shall be based on the best*
29 *available scientific data, written comments submitted by interested*
30 *persons, and information collected by the department in*
31 *preparation for adopting the regulations, and shall address, but*
32 *is not limited to, the impacts associated with all the following:*

33 (1) *Emissions of air pollutants, including ozone forming*
34 *compounds, particulate matter, toxic air contaminants, and*
35 *greenhouse gases.*

36 (2) *Contamination of surface water, groundwater, and soil.*

37 (3) *Disposal or use of the byproducts and waste materials.*

38 (4) *Worker safety and impacts to public health.*

39 (5) *Other anticipated impacts to the environment.*

1 (c) *The council shall complete its review of the multimedia*
2 *evaluation within 90 calendar days following notice from the*
3 *department that it intends to adopt regulations. If the council*
4 *determines that the proposed regulations will cause a significant*
5 *adverse impact on the public health or the environment, or that*
6 *alternatives exist that would be less adverse, the council shall*
7 *recommend alternative measures that the department or other*
8 *state agencies may take to reduce the adverse impact on public*
9 *health or the environment. The council shall make all information*
10 *relating to its review available to the public.*

11 (d) *Within 60 days of receiving notification from the council of*
12 *a determination of significant adverse impact, the department shall*
13 *adopt revisions to the proposed regulation to avoid or reduce the*
14 *adverse impact, or the affected agencies shall take appropriate*
15 *action that will, to the extent feasible, mitigate the adverse impact*
16 *so that, on balance, there is no significant adverse impact on public*
17 *health or the environment.*

18 (e) *In coordinating a multimedia evaluation pursuant to*
19 *subdivision (a), the department shall consult with other boards*
20 *and departments within the California Environmental Protection*
21 *Agency, the State Department of Public Health, the State and*
22 *Consumer Services Agency, the Department of Homeland Security,*
23 *the Department of Industrial Relations, and other state agencies*
24 *with responsibility for, or expertise regarding, impacts that could*
25 *result from the production, use, or disposal of consumer products*
26 *and the ingredients they may contain.*

27 (f) *Notwithstanding subdivision (a), the department may adopt*
28 *regulations pursuant to Sections 25252 and 25253 without*
29 *subjecting the proposed regulation to a multimedia evaluation if*
30 *the council, following an initial evaluation of the proposed*
31 *regulation, conclusively determines that the regulation will not*
32 *have any significant adverse impact on public health or the*
33 *environment.*

34 (g) *For the purposes of this section, “multimedia life cycle*
35 *evaluation” means the identification and evaluation of a significant*
36 *adverse impact on public health or the environment, including air,*
37 *water, or soil, that may result from the production, use, or disposal*
38 *of a consumer product or consumer product ingredient.*

39 SEC. 3. *Section 25253 is added to the Health and Safety Code,*
40 *to read:*

1 25253. (a) (1) *On or before January 1, 2011, the department*
2 *shall adopt regulations pursuant to this section that establish a*
3 *process for evaluating chemicals of concern in consumer products,*
4 *and their potential alternatives, to determine how best to limit*
5 *exposure or to reduce the level of hazard posed by a chemical of*
6 *concern, in accordance with the review process specified in Section*
7 *25252.5. The department shall adopt these regulations in*
8 *consultation with all appropriate state agencies and after*
9 *conducting one or more public workshops for which the department*
10 *provides public notice and provides an opportunity for all*
11 *interested parties to comment.*

12 (2) *The regulations adopted pursuant to this section shall*
13 *establish a process that includes an evaluation of the availability*
14 *of potential alternatives and potential hazards posed by those*
15 *alternatives, as well as an evaluation of critical exposure pathways.*
16 *This process shall include life cycle assessment tools that take into*
17 *consideration, but shall not be limited to, all of the following:*

- 18 (A) *Product function or performance.*
- 19 (B) *Useful life.*
- 20 (C) *Materials and resource consumption.*
- 21 (D) *Water conservation.*
- 22 (E) *Water quality impacts.*
- 23 (F) *Air emissions.*
- 24 (G) *Production, in-use, and transportation energy inputs.*
- 25 (H) *Energy efficiency.*
- 26 (I) *Greenhouse gas emissions.*
- 27 (J) *Waste and end-of-life disposal.*
- 28 (K) *Public health impacts, including potential impacts to*
29 *sensitive subpopulations, including infants and children.*
- 30 (L) *Environmental impacts.*
- 31 (M) *Economic impacts.*

32 (b) *The regulations adopted pursuant to this section shall specify*
33 *the range of regulatory responses that the department may take*
34 *following the completion of the alternatives analysis, including,*
35 *but not limited to, any of the following actions:*

- 36 (1) *Not requiring any action.*
- 37 (2) *Imposing requirements to provide additional information*
38 *needed to assess a chemical of concern and its potential*
39 *alternatives.*

1 (3) *Imposing requirements on the labeling or other type of*
2 *consumer product information.*

3 (4) *Imposing a restriction on the use of the chemical of concern*
4 *in the consumer product.*

5 (5) *Prohibiting the use of the chemical of concern in the*
6 *consumer product.*

7 (6) *Imposing requirements that control access to or limit*
8 *exposure to the chemical of concern in the consumer product.*

9 (7) *Imposing requirements for the manufacturer to manage the*
10 *product at the end of its useful life, including recycling or*
11 *responsible disposal of the consumer product.*

12 (8) *Imposing a requirement to fund green chemistry challenge*
13 *grants where no feasible safer alternative exists.*

14 (9) *Any other outcome the department determines accomplishes*
15 *the requirements of this article.*

16 (c) *The department, in developing the processes and regulations*
17 *pursuant to this section, shall ensure that the tools available are*
18 *in a form that allows for ease of use and transparency of*
19 *application. The department shall also make every feasible effort*
20 *to devise simplified and accessible tools that consumer product*
21 *manufacturers, consumer product distributors, product retailers*
22 *and consumers can use to make consumer product manufacturing,*
23 *sales, and purchase decisions.*

24 SEC. 4. *Section 25254 is added to the Health and Safety Code,*
25 *to read:*

26 25254. (a) *In implementing this article, the department shall*
27 *establish a Green Ribbon Science Panel. The panel shall be*
28 *composed of members whose expertise shall encompass all of the*
29 *following disciplines:*

30 (1) *Chemistry.*

31 (2) *Chemical engineering.*

32 (3) *Environmental law.*

33 (4) *Toxicology.*

34 (5) *Public policy.*

35 (6) *Pollution prevention.*

36 (7) *Cleaner production methods.*

37 (8) *Environmental health.*

38 (9) *Public health.*

39 (10) *Risk analysis.*

40 (11) *Materials science.*

1 (12) Nanotechnology.

2 (13) Chemical synthesis.

3 (14) Research.

4 (15) Maternal and child health.

5 (b) The department shall appoint all members to the panel on
6 or before July 1, 2009. The department shall appoint the members
7 for staggered three-year terms, and may reappoint a member for
8 additional terms, without limitation.

9 (c) The panel shall meet as often as the department deems
10 necessary, with consideration of available resources, but not less
11 than twice each year. The department shall provide for staff and
12 administrative support to the panel.

13 (d) The panel meetings shall be open to the public and are
14 subject to the Bagley-Keene Open Meeting Act (Article 9
15 (commencing with Section 11120) of Chapter 1 of Part 1 of
16 Division 3 of Title 2 of the Government Code).

17 SEC. 5. Section 25255 is added to the Health and Safety Code,
18 to read:

19 25255. The panel may take any of the following actions:

20 (a) Advise the department and the council on scientific and
21 technical matters in support of the goals of this article of
22 significantly reducing adverse health and environmental impacts
23 of chemicals used in commerce, as well as the overall costs of
24 those impacts to the state's society, by encouraging the redesign
25 of consumer products, manufacturing processes, and approaches.

26 (b) Assist the department in developing green chemistry and
27 chemicals policy recommendations and implementation strategies
28 and details, and ensure these recommendations are based on a
29 strong scientific foundation.

30 (c) Advise the department and make recommendations for
31 chemicals the panel views as priorities for which hazard traits and
32 toxicological end-point data should be collected.

33 (d) Advise the department in the adoption of regulations
34 required by this article.

35 (e) Advise the department on any other pertinent matter in
36 implementing this article, as determined by the department.

37 SEC. 6. Section 25257 is added to the Health and Safety Code,
38 to read:

39 25257. (a) A person providing information pursuant to this
40 article may, at the time of submission, identify a portion of the

1 information submitted to the department as a trade secret and,
2 upon the written request of the department, shall provide support
3 for the claim that the information is a trade secret. Except as
4 provided in subdivision (d), a state agency shall not release to the
5 public, subject information supplied pursuant to this article that
6 is a trade secret, and that is so identified at the time of submission,
7 in accordance with Section 6254.7 of the Government Code and
8 Section 1060 of the Evidence Code.

9 (b) This section does not prohibit the exchange of a properly
10 designated trade secret between public agencies, if the trade secret
11 is relevant and necessary to the exercise of the agency's
12 jurisdiction and the public agency exchanging the trade secrets
13 complies with this section. An employee of the department that has
14 access to a properly designated trade secret shall maintain the
15 confidentiality of that trade secret by complying with this section.

16 (c) Information not identified as a trade secret pursuant to
17 subdivision (a) shall be available to the public unless exempted
18 from disclosure by other provisions of law. The fact that
19 information is claimed to be a trade secret is public information.

20 (d) (1) Upon receipt of a request for the release of information
21 that has been claimed to be a trade secret, the department shall
22 immediately notify the person who submitted the information.
23 Based on the request, the department shall determine whether or
24 not the information claimed to be a trade secret is to be released
25 to the public.

26 (2) The department shall make the determination specified in
27 paragraph (1), no later than 60 days after the date the department
28 receives the request for disclosure, but not before 30 days following
29 the notification of the person who submitted the information.

30 (3) If the department decides that the information requested
31 pursuant to this subdivision should be made public, the department
32 shall provide the person who submitted the information 30 days'
33 notice prior to public disclosure of the information, unless, prior
34 to the expiration of the 30-day period, the person who submitted
35 the information obtains an action in an appropriate court for a
36 declaratory judgment that the information is subject to protection
37 under this section or for a preliminary injunction prohibiting
38 disclosure of the information to the public and promptly notifies
39 the department of that action.

1 (e) *This section does not authorize a person to refuse to disclose*
2 *to the department information required to be submitted to the*
3 *department pursuant to this article.*

4 (f) *This section does not apply to hazardous trait submissions*
5 *for chemicals and chemical ingredients pursuant to this article.*

6 SEC. 7. *This act shall become effective only if Senate Bill 509*
7 *of the 2007–08 Regular Session is enacted on or before January*
8 *1, 2009.*

9 SEC. 8. *No reimbursement is required by this act pursuant to*
10 *Section 6 of Article XIII B of the California Constitution because*
11 *the only costs that may be incurred by a local agency or school*
12 *district will be incurred because this act creates a new crime or*
13 *infraction, eliminates a crime or infraction, or changes the penalty*
14 *for a crime or infraction, within the meaning of Section 17556 of*
15 *the Government Code, or changes the definition of a crime within*
16 *the meaning of Section 6 of Article XIII B of the California*
17 *Constitution.*

18
19
20 **All matter omitted in this version of the bill**
21 **appears in the bill as amended in Senate,**
22 **August 12, 2008 (JR11)**
23